



Washington State
Department of Health
Board of Osteopathic Medicine and Surgery
Meeting Minutes
November 17, 2006

The meeting of the Washington State Board of Osteopathic Medicine and Surgery was called to order by Daniel Dugaw, DO, Chair, at 9:05 a.m. The meeting was held at: St. Francis Hospital, 34515 9th Avenue South, Board Room, Federal Way, Washington 98003.

Board Members Present: Daniel Dugaw, DO, Chair
William Gant, Public Member, Vice Chair
Thomas Shelton, DO
Thomas Bell, DO
Catherine Hunter, DO
Roger Ludwig, DO
Larry Smith, DO

Staff Present: Blake Maresh, Executive Secretary
Melissa Burke-Cain, Assistant Attorney General
Arlene Robertson, Program Manager
Joe Mihelich, Administrative Staff

Guests Attending: Kathi Itter, Executive Director,
Washington Osteopathic Medical Association
Kim O'Neal, Assistant Attorney General

Open Session

1. Call to Order
 - 1.1 Approval of Agenda
The agenda was approved as published.
 - 1.2 Approval of Minutes - September 15, 2006 meeting
The minutes of the September 15, 2006 meeting were approved as submitted.

- 1.3 Approval of Minutes - October 6, 2006 conference call minutes
The October 6, 2006 conference call minutes were approved.
- 1.4 Approval of Minutes - October 25, 2006 conference call minutes
The October 25, 2006 conference call minutes were approved.
2. 9:30 Rules Hearing
WAC 246-853-085 Approved colleges and schools of osteopathic medicine and surgery (CR102 Proposed Rule Making - WSR 06-19-107)
ISSUE
A hearing was held to consider the proposed rule for approval of colleges and schools of osteopathic medicine and surgery. Ms. Itter indicated that WOMA supported the rule.
- ACTION
The rule clearly defines that all schools accredited by the American Osteopathic Association Commission on Osteopathic College Accreditation are approved by the Board. Graduates from these colleges and schools will be eligible for licensure in Washington provided all of the other licensure requirements have been met. The Board adopted the rule as written.
3. Prosecuting Cases - Presentation by prosecuting assistant attorney general, Kim O'Neal
ISSUE - Hearing process training
The Board's disciplinary actions have increased and have included several summary suspensions and cases being scheduled for hearing. There are also new board members and others who have had little experience participating in a hearing.
- Ms. O'Neal provided an overview of the Administrative Procedures Act which establishes the process that must be followed when charges have been made against a licensee. The respondent must be afforded an opportunity for due process to present their position on the charges. She also noted that the Uniform Disciplinary Act establishes the definitions for unprofessional conduct, which are used when taking most actions. Due to recent court cases, the Assistant Attorney General prosecuting the case will require an expert for standard of care cases. During the hearing both attorneys must get their position and testimony

on the record. It is important for the hearing panel to have all of the information from both sides relative to the charges. However, it is also important for establishing the record for cases that may be appealed. The judge performing the review will only have the exhibits provided in the case and a transcription of the proceedings when considering the basis for appeal. Although some of the information may seem unnecessary or duplication, it is all relative to the respondent's due process.

4. Rules

- 4.1 Retired Volunteer Medical Worker License - Opportunity to provide feedback on the rules language
 - 4.1.1 ESHB 1850
 - 4.1.2 CR101
 - 4.1.3 Draft language and supporting documents presented at the workshops

ISSUE

The Department of Health is holding workshops and taking input to implement ESHB 1850 which establishes a retired volunteer medical worker license.

ACTION

The following issues were of concern to the Board:

- There could be conflicts with Federal law regulating emergencies.
- Registration fees should be funded by the practitioner's program.
- Continuing competency requirements should not be a burden. The training needs to be available and resources identified where it can be obtained. The level of training should be applicable to the type of practitioner. Training should be funded through Federal or State funding sources, otherwise practitioners will not participate. There is funding provided through the Home Land Security agency for such purposes. It was suggested that DOH should apply for grants to obtain funding for training.
- Not all of the practitioners listed would be used in an emergency, i.e., sex offender treatment providers.
- Practitioners not credentialed by a hospital or other facility are not going to be able to practice in that facility.

Staff working on the rules will be advised of the Board's comments.

5. Practice Issues

5.1 Discuss patient safety initiatives being pursued by the Department of Health. (Standing Agenda Item)
There were no new items for discussion.

5.2 Selling Goods for Profit

5.2.1 Supreme Court Case No. 78635-6
Review applicability to osteopathic practice.
ISSUE

The rebating law has been unclear pertaining to practitioners involvement in selling medical products to patients. In one section it appears to be prohibited and in another it is permitted under some circumstances with practitioner disclosure of their financial interest in the business providing the service or product. Ms. Burke-Cain indicated the Supreme Court decision identifies that products can be marketed by health care professionals for profit.

ACTION

The Supreme Court decision ruled on whether RCW 19.68.010 is an "antikickback" statute or an antiprofit statute. The Supreme Court indicated that RCW 19.68.010 and .020 prohibits profits earned from referring patients, not profits from treating patients or providing goods or services. The Courts' ruling appears to resolve the question related to profiting from products provided directly to patients by medical professionals.

6. Disciplinary Issues

6.1 Disciplinary Guidelines

Review draft guidelines with Board processes. Consider whether to use them on a trial basis.

6.1.1 Disciplinary Guidelines Manual (DRAFT)
6.1.1.1 Sanctions Worksheet (DRAFT)
6.1.1.2 Case Disposition Worksheet (DRAFT)
6.1.1.3 Reviewing Board Member Worksheet
(REVISED-DRAFT)

ISSUE

The Board reviewed a draft Disciplinary Guidelines Manual. The draft incorporates the elements of the Department of Health Disciplinary Guidelines and the Board's procedures. The Board members will be able to refer to the manual as well as the Reviewing Board Member Worksheet when conducting case reviews. At the time of board review and case

disposition, the Case Disposition Worksheet and if applicable, the Sanctions Worksheet would be completed.

ACTION

It was noted that the worksheet questions could be more helpful in outlining what the review board member should consider in making a recommendation. Ms. Burke-Cain offered to assist staff in revising the worksheet questions.

The Board approved using the sanction guidelines for a trial period of six months.

7. Licensing

7.1 Physician Assistant Program Approval
University of Saint Francis
2701 Spring Street
Fort Wayne, Indiana 46808

ACTION

The University of Saint Francis, Physician Assistant Program was approved by the Board. Graduates from the program will be eligible for licensure as an osteopathic physician assistant.

8. Program Manager Reports

8.1 Budget Report - October 2006

ACTION

Ms. Robertson provided the budget report. Due to disciplinary expenditures the budget is exceeding allocations. Staff will continue to closely monitor the budget.

8.2 Washington Physicians Health Program - September 2006
Statistical Information

The report was informational, no action was necessary.

9. Executive Director Reports

9.1 Operating Agreement Between the Department of Health and the Board of Osteopathic Medicine and Surgery

ISSUE

Mr. Maresh provided background information on the Operating Agreement. It is intended to establish a framework for the Board to receive services from the Department.

ACTION

The Board approved renewing the Operating Agreement for another biennium. It was recommended the Operating Agreement be added to the board member manual.

9.2 Department/Division Updates

Mr. Maresh updated the Board on the progress of the ILRS project. It continues to move forward. Many employees are currently involved in workgroups to address the data and output needed to have a complete licensing and disciplinary system.

Mr. Maresh indicated that Section 5 has experienced a number of staffing changes which includes losing both the Licensing and Disciplinary managers. The hiring process is underway to get them replaced as soon as possible.

Mr. Maresh reported he had recently attended the Administrators in Medicine meeting of the Western and Central Regions representatives. Discussions at the meeting included a report by the Citizens Advocacy Council on hospital reporting to the two national data banks. Mr. Maresh also noted that he has been appointed Western Region Representative for the upcoming year.

9.3 Federation of State Medical Boards

9.3.1 2007 Resolutions, Candidate Nominations

9.3.2 Associate Membership

There were no resolutions or candidate nominations to submit to the Federation.

10. (Open Session) Default Presentation

Kent R. Gebhardt, DO - Docket No. 04-10A-10810P

Ms. O'Neal presented a Findings of Fact, Conclusions of Law, and Final Order of Default in the above referenced case. The Board held deliberations in Executive Session. As the reviewing board member, Dr. Shelton was recused from the decision. The respondent will be advised of the Board's decision by mail.

Closed Session

11. Report Reviews/Investigative Authorizations

Two reports were reviewed and approved for investigation.

12. Disciplinary Case Reviews - Reviewing Board Member Reports

CASE NUMBER

DISPOSITION

2004-12-00060P

Refer to Legal; Statement of Charges

2005-07-00090P

Closed Below Threshold, after investigation

2005-03-00060P

Refer to Legal; Stipulation to Informal
Disposition

2006-04-0004OP	Refer to Legal; Stipulation to Informal Disposition
2006-02-0011OP	Closed no cause for action; evidence does not support a violation
2006-08-0001OP	Closed no cause for action; evidence does not support a violation
2006-02-0005OP	Refer to Legal; Statement of Charges
2006-02-0010OP	Refer to Legal; Stipulation to Informal Disposition
2006-05-0002OP	Closed no cause for action; Care rendered was within the standard of care
2006-05-0003OP	Closed no cause for action; Care rendered was within the standard of care
2006-05-0004OP	Closed no cause for action; Care rendered was within the standard of care
2005-06-0002OP	Closed no cause for action; evidence does not support a violation
2006-02-0021OA	Refer to Legal; Notice of Correction
2006-03-0006OP	Closed no cause for action; evidence does not support a violation
2006-03-0005OP	Closed no cause for action; No violation determined
2006-06-0004OP	Closed no cause for action; evidence does not support a violation
2004-12-0009OP	Refer to Legal; Statement of Charges

12.1 Statement of Allegations/Stipulation to Informal Disposition presentations

There were no presentations.

13. Open case report

The Board was provided with a report of open cases.

14. Compliance Issues

There were no compliance issues.

15. Application Review

There were no applications for review.

Respectfully Submitted

Arlene Robertson
Program Manager

<p>NOTE: PLEASE VISIT THE WEB SITE FOR FUTURE AGENDAS AND MINUTES - WWW.DOH.WA.GOV. GO TO LICENSING AND CERTIFICATION AND YOU WILL FIND A LIST OF THE HEALTH CARE PROFESSIONS, GO TO OSTEOPATHIC PHYSICIANS FOR AGENDAS AND MINUTES.</p>
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